STATE OF MINNESOTA
IN COURT OF APPEALS
A21-0278

Michael Sirek,
Relator,

vs.

Northwest Respiratory Services, LLC,
Respondent,

Department of Employment and Economic Development,
Respondent.

Filed November 22, 2021
Reversed
Gaïtas, Judge

Department of Employment and Economic Development
File No. 40555952-3

Terry A. Watkins, Watkins Law Office, LLC, Eagan, Minnesota (for relator)

Northwest Respiratory Services, LLC, St. Paul, Minnesota (respondent employer)

Keri A. Phillips, Anne B. Froelich, Minnesota Department of Employment and Economic Development, St. Paul, Minnesota (for respondent department)

Considered and decided by Gaïtas, Presiding Judge; Ross, Judge; and Reilly, Judge.

NONPRECEDENTIAL OPINION

GAÏTAS, Judge

Relator Michael Sirek challenges the decision of an unemployment-law judge (ULJ) that he is ineligible for unemployment benefits because he quit his job. Because we conclude that Sirek quit his job for a good reason caused by his employer, we reverse.

FACTS

Sirek was employed as a full-time oxygen technician with respondent Northwest Respiratory Services (NRS), an in-home medical oxygen supplier, from May 7, 2019 until he quit on January 12, 2020. He lived in Faribault, and NRS was located in Rochester, about 60 miles from Faribault. Sirek delivered medical oxygen to patients in their homes. When Sirek began his employment with NRS, the company allowed him to keep the company delivery truck at his residence and he would begin and end his route from his home. Sirek would resupply in Rochester two days a week. By starting and ending his route from home, Sirek saved time because many of his delivery locations were closer to his residence and in the opposite direction of Rochester. He also avoided a daily visit to the company site in Rochester.

In January 2020, NRS informed Sirek of a policy change that required all delivery trucks to be returned to Rochester at the end of each day. For Sirek, this change meant that he would have to drive his personal vehicle to and from Rochester every workday, resulting in a new 120-mile round-trip commute. And because his delivery route included locations that were north and west of Faribault, and Rochester is south and east of Faribault, the new policy increased the time it took to do his job.

Sirek discussed the situation with his employer, who gave him ideas about how he could perform the work differently. Although Sirek followed these suggestions, they did not help. He put in his notice and quit employment on January 12, 2020.

On May 3, 2020, Sirek established an unemployment benefits account. He soon received a written determination of ineligibility, which stated that the change in his

employment conditions "did not have a substantial negative effect on the applicant that would cause the average reasonable worker to quit."[1]

Sirek appealed the decision, and a ULJ held a telephone evidentiary hearing. NRS did not attend or participate in the hearing.

During the hearing, Sirek explained that he raised the fact that he lived in Faribault before he accepted the position with NRS. NRS agreed that Sirek would be allowed to keep the delivery truck at his home. And in structuring Sirek's delivery route, the company assumed that he would be starting his route from his home in Faribault. According to Sirek, he would not have accepted the position if he had been required at the outset to leave the delivery truck in Rochester every day.

Sirek testified that he tried the new policy for two days but he was only getting about half of his work done throughout the day. To start his route, he was required to drive from Faribault to the NRS site in Rochester in his personal vehicle and then drive back to the Faribault area and beyond in the company truck. To "get everything supplied," Sirek estimated that he would have been required to leave his home two hours earlier and end his workday two hours later. This would have resulted in an additional 12 to 20 hours of uncompensated time each week. Sirek was also concerned about the feasibility of making all of his deliveries going forward. He testified that "it just wasn't working."

The ULJ concluded that Sirek did not quit because of a good reason caused by his employer and was therefore ineligible for unemployment benefits. Although the ULJ

[1] Sirek obtained a new job in mid-August 2020. It appears that Sirek sought unemployment benefits from January to August 2020.

acknowledged that the policy change "added substantial driving to [Sirek's] day without additional compensation" and that the change may have motivated an employee to look for another job, the ULJ concluded that the added commute time would not "compel an average, reasonable worker to quit and become unemployed rather than remaining in the employment." Sirek requested reconsideration of this decision, and the ULJ reconsidered and affirmed.

Sirek appeals.

DECISION

Sirek challenges the ULJ's decision that he is ineligible for unemployment benefits because he quit without a good reason caused by his employer. We view "the ULJ's factual findings in the light most favorable to the decision, giving deference to the credibility determinations made by the ULJ. In doing so, we will not disturb the ULJ's factual findings when the evidence substantially sustains them." *Skarhus v. Davanni's Inc.*, 721 N.W.2d 340, 344 (Minn. App. 2006) (citations omitted). Whether an applicant had a good reason to quit caused by the employer is a legal question, which we review de novo. *Peppi v. Phyllis Wheatley Cmty. Ctr.*, 614 N.W.2d 750, 752 (Minn. App. 2000).

An employee who voluntarily quits employment is ineligible for unemployment benefits unless "the applicant quit the employment because of a good reason caused by the employer." Minn. Stat. § 268.095, subd. 1(1) (2020). A good reason caused by the employer is a reason "(1) that is directly related to the employment and for which the employer is responsible; (2) that is adverse to the worker; and (3) that would compel an average, reasonable worker to quit and become unemployed rather than remaining in the

employment." *Id.*, subd. 3(a) (2020). "To compel" is "to cause or bring about by force, threats, or overwhelming pressure." *Werner v. Med. Pros. LLC*, 782 N.W.2d 840, 843 (Minn. App. 2010) (quoting *Black's Law Dictionary* 321 (9th ed. 2009)), *rev. denied* (Minn. Aug. 10, 2010).

This standard is an objective, reasonable-person standard, considering the conduct of an ordinarily prudent person. *Id.* It is based on the average person "and not . . . the supersensitive." *Nichols v. Reliant Eng'g & Mfg.*, 720 N.W.2d 590, 597 (Minn. App. 2006) (quotation omitted). An employee's reason for quitting must be "substantial not trifling, and reasonable, not whimsical; there must be some compulsion produced by extraneous and necessitous circumstances." *Ferguson v. Dep't of Emp. Servs.*, 247 N.W.2d 895, 900 n.5 (Minn. 1976) (quotation omitted).

This statutory analysis "must be applied to the specific facts of each case." Minn. Stat. § 268.095, subd. 3(b) (2020). The reason why an individual quit employment is a fact question for the ULJ to determine. *See Beyer v. Heavy Duty Air, Inc.*, 393 N.W.2d 380, 382 (Minn. App. 1986) (reviewing determination of reason employee quit as a question of fact).

The ULJ concluded that "Sirek quit employment for reasons other than a good reason caused by the employer," characterizing Sirek's basis for quitting as a commuting or transportation issue and noting that the change in NRS's policy "added substantial driving to [Sirek's] day without additional compensation." The ULJ determined, however, that the change in circumstances was not something that would compel an average, reasonable person to quit.

This conclusion relied on the legal premise that an increased commute is generally a transportation problem that is not attributable to the employer. *See, e.g.*, *Werner*, 782 N.W.2d at 842; *see also Hill v. Cont. Beverages, Inc*., 240 N.W.2d 314, 316 (Minn. 1976) (holding that relator was ineligible for unemployment benefits when his employer changed his shift, causing him to be unable to find transportation). In *Werner*, for example, we held that an employee's decision to quit after her round-trip commute of 170 miles increased by 17 miles each way due to the employer's relocation was not based on a good reason caused by her employer. 782 N.W.2d at 841. We reasoned that, because transportation is usually the problem of the employee, the increased time and expense associated with a long commute are personal reasons for quitting that do not constitute "compulsion" by the employer. *Id.* at 843.

Sirek argues that the employer's policy change did not present a mere commuting or transportation issue. He contends that NRS's previous policy—which allowed him to keep the delivery truck at his home—was more akin to a term of his employment that the employer suddenly changed. Indeed, according to Sirek, he never would have taken the job if he had been required to drive his personal vehicle 120 miles per day and to work additional uncompensated hours to complete his route, which was tailored around a starting point at his home in Faribault.

We have previously considered whether an employer's unilateral changes to significant agreed-upon employment terms provide a good reason for an employee to quit. In *Krantz v. Loxtercamp Transp., Inc.*, we held that the employer's change of the employee's agreed-upon schedule at the time of the hire was a good reason caused by the

employer to quit. 410 N.W.2d 24 (Minn. App. 1987). Similarly, in *Rootes v. Wal-Mart Assocs., Inc.*, we determined that an employee's demotion, which resulted in lower pay and fewer hours than agreed upon at the time of the employee's hire, was a good reason caused by the employer to quit. 669 N.W.2d 416 (Minn. App. 2003).

Here, the record supports the ULJ's factual finding that NRS's new policy "added substantial driving to [Sirek's] day without additional compensation." But we disagree with the ULJ's ultimate legal determination that the policy change presented a mere commuting or transportation issue, which did not provide an employer-based good reason for Sirek's decision to quit.

Before Sirek began working for NRS, he specifically raised the issue of the 60-mile distance between his home and the NRS facility. That concern was addressed by NRS's agreement to allow him to keep the delivery truck at his home and to begin his route from home each day. Sirek only accepted the position with NRS based on this understanding. Given these circumstances, NRS's agreement that Sirek could keep the delivery truck at home during off hours was effectively a term of the employment. That term allowed Sirek to use the company vehicle and avoid commuting in his personal vehicle. It affected the duration of his workdays because his route was planned around his residence. And it allowed him to take a position from an employer in Rochester that he otherwise would not have accepted.[2] In Sirek's employment with NRS, it was *agreed* that transportation would

[2] NRS belatedly submitted to the ULJ a copy of Sirek's employment offer letter and its policy on use of company vehicles. These items were not received before the telephone hearing and they were not included in the record considered by the ULJ. We "may not

not be Sirek's problem. *Contra Werner*, 782 N.W.2d at 842 ("[T]he record reflects that transportation was ultimately [Werner's] responsibility, not the employer's."). As a term of employment, Sirek was permitted to begin and end his days from home.

Much like the employers' unilateral changes in *Krantz* and *Rootes*, NRS's new policy significantly and adversely changed that term of Sirek's employment. Sirek had to use his personal vehicle to commute to work. To continue in the employment, he was required to drive 120 more miles each workday. And the inefficiency of the new policy, which required him to commute to Rochester only to later pass his own home on his regular route, caused him to put in driving time that was not compensable. The policy change was directly related to Sirek's employment, NRS was responsible for the change, and the change created was a condition that was adverse to Sirek.

Even in the face of an adverse condition caused by an employer, an employee does not have a good reason to quit if the change in circumstances would not compel an average, reasonable worker to quit. *Id.* at 843. The ULJ determined that NRS's policy change would not have compelled a reasonable worker to quit the position.

Applying our de novo standard of review, we conclude otherwise. NRS's policy change dramatically affected Sirek's employment conditions. Again, the change required Sirek to drive 120 miles each day in his personal vehicle just to get to his work vehicle, which he previously had kept at home. Sirek would only be able to complete his route—a route that was designed to start and end at his home—if he added multiple uncompensated

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consider matters not produced and received in evidence below." *Icenhower v. Total Auto., Inc.*, 845 N.W.2d 849, 857 (Minn. App. 2014), *rev. denied* (Minn. July 15, 2014).

work hours each day. Given these circumstances, an average, reasonable worker surely would have felt overwhelming pressure to quit rather than continue in the employment under these conditions while also seeking a new job.

Sirek quit his employment with NRS for a good reason caused by the employer. The ULJ therefore erred in determining that he is ineligible for employment benefits.

Reversed.